

FILED / PRODUIT

Date: January 29, 2024

CT- 2023-003

Annie Ruhlmann for / pour
REGISTRAR / REGISTRAIRE

CT-2023-003

OTTAWA, ONT.

40

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act* and subsection 74.01(1.1) of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

**AFFIDAVIT OF DR. VICKI MORWITZ
(AFFIRMED JANUARY 29, 2024)**

1. My name is Vicki Morwitz. I am the Bruce Greenwald Professor of Business and Professor of Marketing at Columbia Business School at Columbia University. I joined Columbia University in July 2019. Prior to that I was the Harvey Golub Professor of Business Leadership and Professor of Marketing at the Stern School of Business, New York University.
2. I prepared an initial Expert Report dated January 5, 2024 requested by the Commissioner of Competition where I provide my opinion and

analysis relating to the Commissioner's Notice of Application against Cineplex Inc.

- 3. I have now prepared a Reply Expert Report dated January 29,2024, which I have attached as Exhibit "A" to this affidavit.

Affirmed remotely by Vicki Morwitz)
 stated as being located in the City of)
 New York in the State of New York, before)
 me at the City Of Ottawa in the Province of)
 Ontario on January 29, 2024 in accordance)
 with O. Reg. 431/20, Administering Oath)
 or Declaration Remotely)



 Commissioner for Taking Affidavits)



Digitally signed by Vicki Morwitz
 DN: CN=Vicki Morwitz, E=vgm2113@gsb.columbia.edu
 Reason: I am approving this document
 Location:
 Date: 2024.01.29 09:39:58 -05'00'
 Foxit PDF Editor Version: 13.0.1

Vicki Morwitz

 Vicki Morwitz



This is Exhibit "A" to the affidavit of Vicki Morwitz,
affirmed remotely and stated as being located
in the city of New York in the State of New York,
before me in the city of Ottawa in the province of Ontario,
on January 29, 2024, in accordance with
O. Reg 431/20, Administering Oath or Declaration Remotely.



CT-2023-003

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition for an order under sections 74.1 and 74.1 of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

**EXPERT REPLY REPORT OF DR. VICKI MORWITZ
JANUARY 29, 2024**

Table of Contents

I. Dr. Amir is incorrect that firms will not use drip pricing merely because they aim to build a positive reputation with their customers.	3
II. Dr. Amir is incorrect in saying that consumers are provided clear information and itemization of the online booking fee when prices are first shown and his report fails to provide details of technical settings related to screen size and scrolling necessity.	5
III. Consumer complaints are not relevant to the matter.	9
IV. Consumer self-selection will increase consumer welfare, but cannot do so without clear information; non-price information is not relevant to the question at hand.	11
V. I disagree with Dr. Amir’s conclusion that I failed to show that the Cineplex Consumer Flow involves drip pricing, price obfuscation, and shrouded attributes.	15
VI. In using knowledge from the academic literature to support my claims it was unnecessary to empirically test my hypotheses.	18
VII. Dr. Amir’s analysis of customer flow through the Cineplex website is irrelevant for the matter at hand.	25

1. I have reviewed the report prepared by Cineplex's expert witness, Dr. On Amir and the witness statement of Daniel McGrath. Below I describe the major points in Dr. Amir's report with which I disagree and explain why.
 - I. **Dr. Amir is incorrect that firms will not use drip pricing merely because they aim to build a positive reputation with their customers.**
2. Dr. Amir opines (in paras 23-25 of his expert report) that firms are incentivized to design transparent processes for their customers and to avoid using deceptive practices. He argues that, because of these incentives, hiding fees is unlikely to be a sensible approach for companies. He acknowledges that hiding and being deceptive about fees can increase profits for firms in the short run, but argues it is not a viable long-term practice.
3. While I agree with Dr. Amir that firms are incentivized to create positive brand reputations and to build customer loyalty, it is important to recognize that they also are strongly incentivized to develop business practices that increase their revenues and profits. The latter incentives may be why there appears to be a proliferation in the use of surcharges and fees in many different industries in recent years, despite the potential negative effect such fees might have on customer loyalty, as suggested by Dr. Amir. There is also evidence that customers are often surprised and frustrated by the presence of fees, suggesting that these fees are not always displayed in clear and prominent ways by well-meaning companies.¹
4. Further, the academic literature on drip pricing has shown that the dripping of fees (versus fully revealing them upfront), leads to higher revenues and profits for firms.² Thus, firms do appear to have an economic incentive to

¹ Wong, Penelope (2019), "Protect Yourself from Hidden Fees," *Consumer Reports*, May 29, accessed on January 15, 2024, <https://www.consumerreports.org/money/fees-billing/protect-yourself-from-hidden-fees-a1096754265/>.

² Blake, Tom, Sarah Moshary, Kane Sweeney, and Steve Tadelis (2021), "Price Salience and Product Choice," *Marketing Science*, 40 (4), 619-636; Rasch, Alexander, Miriam Thöne, and

- engage in drip pricing. The academic literature has also shown that the use of shrouded attributes by firms will exist in equilibrium, in other words, market pressures will not be enough to eliminate the use of these pricing practices and we should therefore expect to see them in the market.³
5. While Dr. Amir claims that industries that rely on repeat business would not display fees in ways that would adversely affect consumers, data gathered by Consumer Reports shows that consumers reported experiencing hidden fees in many industries that involve repeat business including telecommunications, live entertainment and sporting events, gas and electric bills, personal banking, credit cards, and more.⁴ In particular, the live entertainment and sporting event industry is quite similar to the movie industry and the dripping of fees is common practice in that industry (though regulation has now made it illegal in some countries and geographic areas).⁵ This research has also shown that the dripping of surcharges in the ticketing industry leads to increased revenues and that the adverse effects of drip pricing on consumers are not eliminated when consumers engage in repeat purchasing.⁶
 6. Thus, in contrast to the conjecture of Dr. Amir, it does appear that even if customers are frustrated with hidden surcharges and fees, that alone is not enough for firms to avoid using them. Firms aim to engage in practices that

Tobias Wenzel (2020), "Drip Pricing and its Regulation: Experimental Evidence." *Journal of Economic Behavior & Organization*, 176, 353-370.

³ Gabaix, Xavier, and David Laibson (2006), "Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets," *The Quarterly Journal of Economics*, 121 (2), 505-540.

⁴ Wong, Penelope (2019), "Protect Yourself from Hidden Fees," *Consumer Reports*, May 29, accessed on January 15, 2024, <https://www.consumerreports.org/money/fees-billing/protect-yourself-from-hidden-fees-a1096754265/>.

⁵ e.g., see <https://www.accc.gov.au/consumers/buying-products-and-services/buying-tickets-to-events>; https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB478; <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-targeting-unfair-ticketing-practices-live-event-industry>, (all accessed on January 26, 2024).

⁶ Blake, Tom, Sarah Moshary, Kane Sweeney, and Steve Tadelis (2021), "Price Salience and Product Choice," *Marketing Science*, 40 (4), 619-636.

lead to increased revenues and profits and the evidence suggests that using dripped surcharges does just that.

II. Dr. Amir is incorrect in saying that consumers are provided clear information and itemization of the online booking fee when prices are first shown and his report fails to provide details of technical settings related to screen size and scrolling necessity.

7. Dr. Amir states (see paras 31, 60, 66 in his expert report) that consumers are presented with clear information about the online booking fee on the same page where prices are first shown. As evidence for this opinion, he presents Figure 4, which depicts a version of the full web Tickets page before any tickets are added to the cart (i.e., using a screen and/or font size setting where all content is shown at once and no scrolling is needed).
8. In contrast to what Dr. Amir claims, nowhere in Figure 4 of his report is the itemized cost of the online booking fee clearly displayed, or in fact, displayed at all. As I discuss in my expert report (see paras 115-130 of my expert report), before tickets are added to the cart, there is no information provided about the cost of the online booking fee and how it is applied. The only way a customer could obtain this information is if they clicked on the “ⓘ” button next to the Online Booking Fee header, and even then, a price of zero is shown for the online booking fee before tickets are added. Importantly, clicking on that button is not mandatory and noticing that the button is there may, for some consumers, require scrolling to the bottom of the page. This page also does not make clear anywhere that the prices listed under the Standard header are the prices for tickets purchased at a theater, not for tickets purchased online.
9. Further, as I discuss in my expert report (see paras 124-130 of my expert report), the limited information that is provided about online booking fees is not clearly or prominently displayed. The “Online Booking Fee” header is presented in a smaller font than the headers for Standard ticket prices, for

Scene+, and for Certificate or Promo code, making the section less salient. Further, in my own search, and possibly for other consumers, depending on their monitor and settings, obtaining this information requires scrolling to the bottom of the page, which is not something consumers have to do. For consumers for whom scrolling is required to see content on the bottom of the Tickets page, this section would not be seen at all if they do not scroll to the bottom of the page. Dr. Amir only discusses the app experience in the appendix, and does not discuss the mobile web experience at all. When consumers use mobile devices, they likely too would need to scroll to see this section and the online booking fee information.

10. It is not clear if Figure 4 is what Dr. Amir actually observed while viewing the Cineplex website. He does not state in his report whether or not he engaged in his own searches, or if he did, provide any details on the equipment or settings that he used. While I acknowledge it is possible that there may be settings where all that is shown in Figure 4 of his report can be seen in one view without scrolling required to get to the bottom, in my own experience this did not occur. I do not dispute that it is possible to force all the content to appear on one screen by using a zoom function.
11. Using the same settings as used to obtain screen captures in my expert report, I again searched on the Cineplex website for tickets, this time for a January 25, 2024, 10:00pm showing of Mean Girls (2024), at the Cinéma Banque Scotia Montréal. In Figures 1a-1d below I show the content that naturally appeared when I first viewed the Tickets page, and then what I saw each time I used the Windows Control-minus zoom function. Notably it took zooming out three times for me to view the full content without the need to scroll. However, I again acknowledge that this will vary depending on consumers' own screen size and display settings.

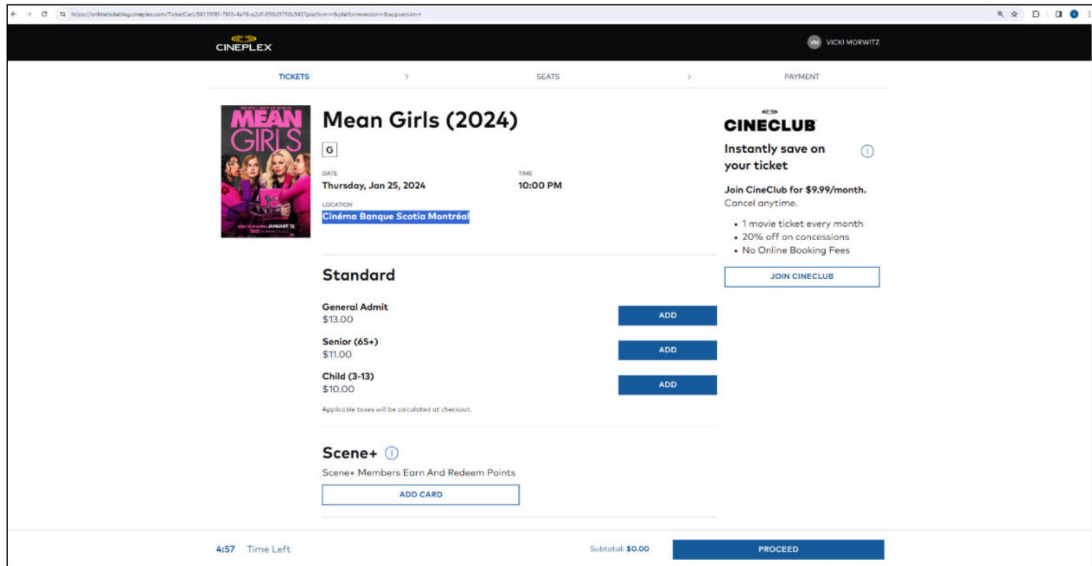


Figure 1a – Website – tickets page, no zoom

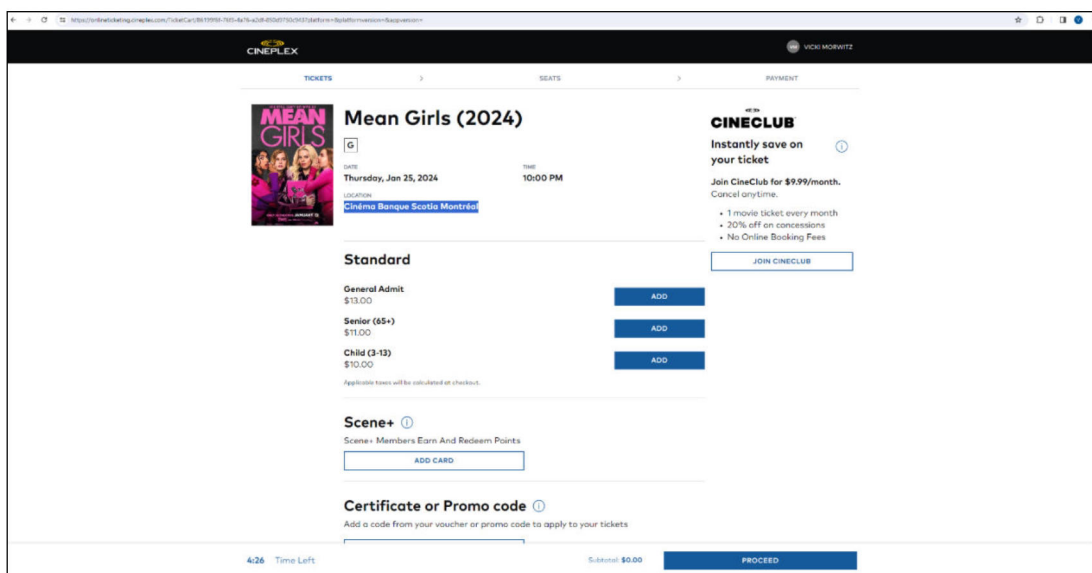


Figure 1b – Website – tickets page, zoom out once

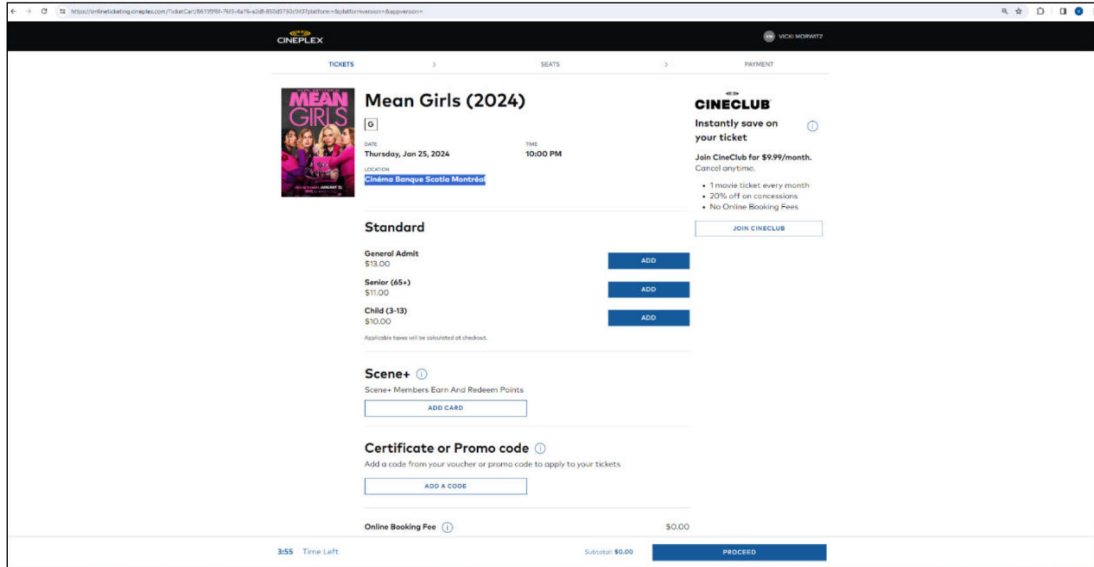


Figure 1c – Website – tickets page, zoom out twice

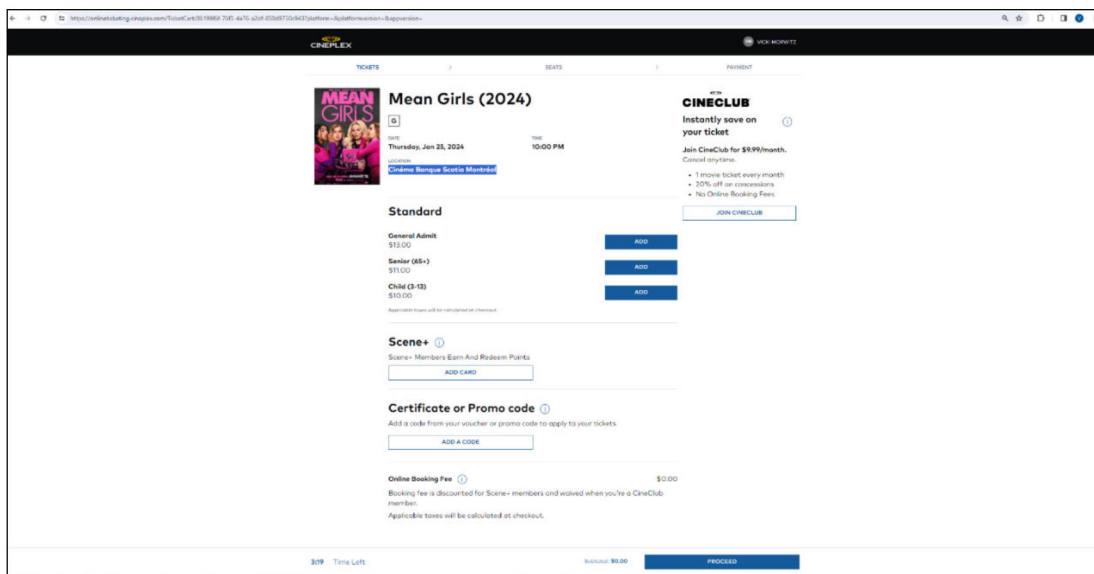


Figure 1d – Website – tickets page, zoom out three times

12. Dr. Amir does not mention that scrolling is likely needed for some consumers. He does not acknowledge anywhere in his report that, as my images show, scrolling may be required both on the website and in the app. In addition, when Dr. Amir shows the comparable Tickets page for the app

in Appendix C, Figure C-3 of his expert report, he has to provide two separate screen shots for what a consumer can see before and after scrolling on the Tickets page. What is notably absent from Dr. Amir's report is any information or labels or discussion to make clear that the top part of Figure C-3 is what can be seen before scrolling and the bottom part is what can be seen after scrolling. Dr. Amir does not provide such essential information, rather he simply says that the options are provided in a more "mobile-friendly" layout that is generally more vertical and compressed (see para 22 of his expert report), which is not relevant to the issue at hand. Notably, his images mirror what I experienced in my own searches using the app (see Figures 9 and 11 in my expert report) and support the conclusions I drew in my report. Importantly, his app figure makes clear that, just as I experienced during my own searches, the section on the online booking fee can only be seen if the customer scrolls to the bottom of the page.

13. Dr. Amir claims (see para 40 of his expert report) that consumers are informed about the online booking fee in the sections regarding CineClub and in mentions to Scene+ on the website. I disagree that this information is enough to inform consumers regarding the presence and amount of the online booking fee. As I discuss in my report (see para 118 of my expert report), merely mentioning that there is no online booking fee for CineClub members in the upper right of the webpage, is not sufficient for consumers to know when online booking fees will be applied and what will be the cost. And even if it were, that information is not provided on the app. Similarly, merely mentioning that the fee is discounted for Scene+ members is not sufficient for informing consumers about when online booking fees will be assessed and what will be the amount assessed.

III. Consumer complaints are not relevant to the matter.

14. Dr. Amir did an analysis of the number of complaints made to the Competition Bureau and the timing of those complaints (see paras 33 and

34 of his expert report). I do not question his analysis of the number and timing of complaints made to the Competition Bureau. However, I do not consider this analysis to be relevant to the matter of whether the way in which Cineplex presented the online booking fee affected consumers' price perceptions or their behavior. I also believe it is only of minimal relevance for whether Cineplex's presentation method was deceptive.

15. First, Dr. Amir only considered complaints made to the Competition Bureau. Consumers complain in many different ways and to many different parties; to friends and family to warn them, to online forums and review sites,⁷ to the company itself and their employees, and to government entities and other organizations. Thus, his analysis likely only reflected a subset of complaints made by consumers to different parties.
16. Second, Dr. Amir's conclusions based on his analysis are flawed because consumers frequently do not submit complaints to law enforcement agencies such as the Competition Bureau even when they are dissatisfied with a business experience or practice.
17. A study of utility customers found that the majority indicated that they had experienced problems but did not report them to complaint organizations. Rather 36 percent did nothing about the perceived problem, and another 54 percent told someone else, generally a family member or a friend, about their dissatisfaction, but very few reported their problems to third-party complaint-handling organizations. This study stated that customers do not complain about their negative experiences to firms and other authorities for many reasons, including the amount of effort needed to make these contacts and to articulate the problem and the anxiety associated with doing so. This research also noted that some people might complain first to

⁷ As an example, this link (accessed on January 18, 2024) points to one of several Reddit chains where consumers complain about Cineplex's online booking fee:
https://www.reddit.com/r/PersonalFinanceCanada/comments/vhm0g0/cineplex_just_added_150_booking_fee_how_do_you/

close others, and that their feelings of dissatisfaction, injustice, and anxiety might reduce after complaining to close others, even when the problem still exists.⁸ This all suggests we cannot draw any strong conclusions based on the number of complaints made to the Competition Bureau about Cineplex's presentation of an online booking fee.

18. Another reason why consumers might not complain is because they may not have realized that they were assessed an additional fee. The research on partitioned pricing and price obfuscation has shown that consumers do not always notice or fully attend to additional fees.⁹ Consumers who do not notice that there is an additional fee, because of how it is presented, would not be able to complain about that fee.
19. Finally, the number of complaints is simply not relevant to the question at hand. My opinion answers the question as to whether the manner in which Cineplex presents its online booking fee affects consumers' price perceptions and their behavior, not whether it affects their likelihood to complain to the Competition Bureau.

IV. Consumer self-selection will increase consumer welfare, but cannot do so without clear information; non-price information is not relevant to the question at hand.

20. I agree with Dr. Amir that allowing consumers to self-select into the consumption experience they want, and pay the associated price for what they want, is welfare enhancing. I also agree with Dr. Amir that consumers often go through a multi-step decision making process when making a

⁸ Hyman, Drew, John Shingler, and Mitchell Miller (1992), "Consumer Complaints and Public Policy: Validating the 'Tip-of-the-Iceberg' Theory," *Sociological Practice*, 10 (1), 97-122.

⁹ Gabaix, Xavier, and David Laibson (2006), "Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets," *The Quarterly Journal of Economics*, 121 (2), 505-540; Morwitz, Vicki G., Eric Greenleaf, and Eric Johnson (1998), "Divide and Prosper: Consumers' Reactions to Partitioned Prices," *Journal of Marketing Research*, 25 (November), 453-463; Seim, Katja, Maria Ana Vitorino, and David Muir (2017), "Drip Pricing When Consumers Have Limited Foresight: Evidence from Driving School Fees," Working paper.

purchase decision. In the current context, such steps might involve deciding whether to go to the movies, which movie to see, where, at what time, and in what format. I also do not dispute that other, non-price related, information that Cineplex makes available on its website and app provide value and will help consumers during different stages of their decision-making process to determine if there is a movie they would like to see, if it is being shown in a convenient location and at a desired time, and to learn if it is being presented in different formats.

21. Dr. Amir criticizes me for not reviewing non-price information (see para 80 of his expert report). I did not review that information because it was not relevant to the questions I was asked to opine on, which concerned price presentation and its impact on consumers.
22. What is relevant for the matter at hand is whether consumers are provided with clear information about different price options. With the inclusion of the online booking fee, for most consumers (with the exception of those who are members of CineClub, who pay a monthly fee for the associated benefits), the price of movie tickets is higher if purchased online than if purchased at the movie theater itself. The witness statement of Daniel McGrath (see paras 16, 38-42, and 46), indicates that Cineplex believes that the benefits that consumers obtain from paying more to purchase tickets in advance online is that they know they will get to see the movie and they can select seats in advance.
23. However, for consumers to be able to self-select into where they want to buy and at what price, they must be provided with clear information about the prices at the different channels they are considering. Despite the claims made by Daniel McGrath (see paras 64 and 65 of his witness statement) and by Dr. Amir (see para 56 of his expert report), nowhere on the Cineplex website or app does it state that the ticket prices shown on the top of the Tickets page (the initial price representations under the header “Standard”) are the prices for tickets purchased at the theater. Thus, there is no clear

way a consumer could use the Cineplex website or app to compare the prices for movie tickets purchased at the theater versus online, since nowhere on the website or app are consumers told that any prices shown represent prices for tickets purchased at the theater.

24. Dr. Amir further claims in this same paragraph that if Cineplex clearly first presented the full online price to consumers using their website or app, it would lead to confusion and clutter, for example, because the fee would later need to be discounted or waived for Scene+ and CineClub members. However, Cineplex's website requires consumers to log in before they are shown ticket prices, so I would presume they could display the appropriate price for consumers whose profiles indicate these memberships. He further notes that consumers would be confused about what the price would be for tickets at the theater. However, as I noted above, nowhere on the website or the app does it state that the prices listed under the header "Standard" are the theater prices.
25. For all the reasons I state in my expert report, consumers who are on the website or app and decide to buy online, may not notice that an additional online booking fee is added to those ticket prices. They therefore may not be aware that online ticket prices are higher than the prices for tickets first shown on the Tickets page.
26. In contrast, consumers who go to a theater, presumably only see posted ticket prices for the theater. If they have a phone (assuming that the consumer wishes to provide to Cineplex the personal information necessary to view prices online) they could access Cineplex's mobile website or they could open the Cineplex app to see what prices are for buying online. A consumer who did this quickly and did not scroll to the bottom of the Tickets page (assuming their settings required scrolling) would first see ticket prices that appear to be the same as the posted prices at the theater. Only if they scroll might they notice that there is an additional online booking fee.

27. Given the current price presentations on Cineplex's website and app and the fact that information about the online booking fee is not made salient, it is my opinion that consumers who use the website or app are not provided with clear information about the price for tickets purchased online (for all the reasons outlined in my expert report). Therefore, and because the prices for tickets purchased at the theater are not clearly communicated on the website or app, consumers cannot easily compare prices for buying at the theater versus online. They therefore are compromised in doing a cost benefit tradeoff to self-select into the purchase channel and price that is best for them. Thus, the manner in which Cineplex displays information about its online booking fee hinders rather than helps consumers to self-select the offering and price that is best for them.
28. Further, once a customer is using Cineplex's website or app, if they want to see ticket prices, they have to press a button that says "Get Tickets" which indicates to the consumer that the Tickets page is no longer informational but rather about purchasing details and decisions. Once they have done that, the most immediate and relevant choices that they face are only whether or not to add tickets to the cart, and if they do so, whether to complete the purchase or to abandon the purchase. For these more directly relevant decisions too, consumers need clear information in order to make the appropriate cost-benefit analysis to make the decision that is best for them. Specifically, they need information about the all-inclusive cost of a movie ticket purchased online in order to make a fully informed decision regarding whether to buy, how many tickets to buy, and for which type experience when multiple options are offered (e.g., 3D, recliner seats, etc.). For all the reasons I state in my expert report, I do not believe that Cineplex's price presentations provide consumers with clear information about the total per-ticket cost of a movie ticket purchased online. Rather, as I conclude in my expert report, I believe that the price representations for tickets on the website and app lead consumers to believe that prices for online tickets are lower than they actually are, which then hinders accurate

cost-benefit tradeoffs. I also believe it leads consumers to be more likely to complete the purchase than if the total price for buying a ticket online were clearly and fully revealed.

V. I disagree with Dr. Amir's conclusion that I failed to show that the Cineplex Consumer Flow involves drip pricing, price obfuscation, and shrouded attributes.

29. Dr. Amir claims (see para 61 in his expert report) that I am incorrect in opining that the academic literature on drip pricing, price obfuscation, and shrouded attributes apply to the matter at hand. I note too that he does not mention in this part of his report the literature on partitioned pricing, so I assume he does agree with me that the findings from that literature do apply.

30. Dr. Amir claims that the academic literature on drip pricing, price obfuscation, and shrouded attributes do not apply because of his claim that the base ticket price and the online booking fee are presented to consumers simultaneously. As I stated above and in my expert report, my opinion is that the base prices and the online booking fee are not presented simultaneously, rather they are presented sequentially. As I describe in my expert report, consumers first are provided with information about base ticket prices. Only after they add tickets to their cart, and only if they scroll to the bottom of the web page or app (if needed, given their settings) might they see information regarding the separated and additional online booking fee. Thus, additional steps must be taken to see the fee, which might include some or all of adding tickets to the cart, scrolling to the bottom of the Tickets page, clicking on “Ⓢ” button, and/or noticing that the subtotal or total price shown reflects more than the sum of the base ticket prices.

31. Dr. Amir claims I did not support these assertions because I did not point to any literature or do any data analysis that justifies my conclusions that these literatures are relevant to the case at hand. I do indeed discuss the

academic literature in my expert report and explain its relevance throughout my report. Dr. Amir is correct in that I did not do any data analysis to justify my opinion of the relevance of that literature, but my opinion is that data analysis is not appropriate for determining if a pricing practice meets a definition in the literature. In contrast, all that is needed is to understand the definition and to observe the practice.

32. For example, as I state in my expert report, by definition, partitioned pricing occurs when firms divide a price into a base price and one or more additional surcharges rather than charging a single, all-inclusive price. Cineplex does present a separate base price and an additional online booking fee on their website and app platforms, so it is clear that they are using partitioned pricing. No empirical analysis is necessary to make that claim.
33. The academic definition of drip pricing is a pricing practice where a firm presents base price information early in the consumer decision making process, but only subsequently provides information about additional fees. Since Cineplex does not present the information about the additional online booking fee together with information about the base prices, and because obtaining information about the online booking fee may require looking further down on the web page or app and possibly scrolling, adding tickets to the cart, and looking at totals that are provided after first seeing base price information, it is clear they are using drip pricing. No empirical analysis is necessary to make that claim. Thus, I disagree with what Dr. Amir opines regarding whether Cineplex is engaged in drip pricing based on my own statements and writings on drip pricing (see para 66 of his expert report) and I stand by my conclusion that Cineplex engages in drip pricing, based on the U.S. Federal Trade Commission's (FTC) definition and the definitions I have used in my publications and in this opinion of drip pricing.

34. The academic definition of price obfuscation is when a firm presents price information in a way that makes it more difficult for consumers to notice or understand and a shrouded attribute is defined as the specific information that firms obfuscate from their consumers. Since Cineplex does not present the information about the additional online booking fee together with information about the base prices, and because obtaining information about the online booking fee may require looking further down on a web page and possibly scrolling, adding tickets to the cart, and looking at totals that are provided after first seeing base price information, and because the header used by Cineplex for the section of their website and app about the online booking fee is presented in a smaller font than the other headers, I concluded that Cineplex is using price obfuscation and that the online booking fee is a shrouded attribute. No empirical analysis is necessary to make that claim.
35. Dr. Amir states (in para 64 of his expert report) that the only support I provide for my claim that this literature is relevant is my own personal review of the experience of shopping for a Cineplex movie ticket on their website and the app. He is mistaken. I undertook a personal review as it was necessary in order for me to view Cineplex's price representations and to determine if they meet the definitions outlined above. My opinions are based on the price representations, not about something idiosyncratic to my own method of searching or my own movie preferences, with the exception of my screen settings, which I did not alter from my default settings.
36. I do not dispute that Dr. Amir's statement (in para 64 of his expert report) that when tickets are added one by one to the shopping cart, the associated total online booking fee and subtotal increase at every step. He is correct that I failed to mention this in my expert report, and this is indeed what happens as consumers add tickets to the cart. Regardless, I do not believe that, based on this, consumers will have a clear understanding of the per-ticket booking fee. As consumers add tickets to the shopping cart,

most likely they are focused on and looking at the part of the website or the app where they indicate the number of tickets they want. To see how much the online booking fee increases with each additional ticket added would require a consumer to go down to the bottom of the Tickets page (which might involve scrolling), or to click on the “i” button next to the online booking fee header each time they added a ticket (which might also involve scrolling), or to remember the prior subtotal and to do mental calculations subtracting this from the new subtotal once a ticket is added to the cart. Overall, while I agree with Dr. Amir that when consumers add more tickets, the total online booking fee and the subtotal at the bottom of the page go up, I also believe that most consumers are not looking at these numbers. Rather, they are likely focused on the top and middle of the page where they are choosing their tickets. Academic research has shown that consumer attention on a website is related to what consumers are trying to accomplish on that website.¹⁰

VI. In using knowledge from the academic literature to support my claims it was unnecessary to empirically test my hypotheses.

37. Dr. Amir is correct that I drew conclusions based on the academic literature. He is also correct that I did not perform a specific analysis of Cineplex customers. However, his contention that my assertions are not founded because I did not do an empirical analysis of Cineplex pricing with Cineplex consumers (see paras 70 and 72 of his expert report) is not sound.
38. I disagree with Dr. Amir’s opinion that for these reasons the academic literature cannot shed any insights into the impact of how Cineplex discloses its online booking fee on consumers and that only a direct empirical test can be used for these purposes. The purpose of academic research is to develop new knowledge that can help us to explain, predict,

¹⁰ Rowley, Jennifer. (2000), “Product Search in E-Shopping: A Review and Research Propositions,” *Journal of Consumer Marketing*, 17(1), 20-35.

- and understand phenomena. Research in marketing and related fields, such as the research I cite in my report, has an aim to advance fundamental knowledge in marketing and to use that knowledge to advance practical interests of marketers and public policy makers.¹¹ Thus, this research is not conducted to only provide insights that hold for the specific stimuli examined in that paper, but to develop more generalized knowledge that can be applied to a range of practices. Importantly, marketers and public policy makers learn from academic research and consider academic research to be relevant and helpful to their own decision-making.
39. In contrast to Dr. Amir's claims that academic research is not relevant for understanding how consumers will react to drip pricing, a major U.S. regulatory agency, the National Economic Council of the U.S. White House, and the Commerce Committee of the U.S. Senate all felt that academic research would be quite helpful in this regard.
40. Specifically, in 2012, the FTC organized a conference on drip pricing with the exact goal to bring together academic scholars from marketing (one of whom was me) and economics to discuss how academic research can shed light on questions including: Why do firms engage in drip pricing? How does drip pricing affect consumer search? Where does drip pricing occur? When is drip pricing harmful? Are there efficiency justifications for the practice in some situations? Can competition prevent firms from harming consumers through drip pricing? Can consumer experience or firm reputation limit harm from drip pricing? What types of policies could lead to improved consumer decision making and under what circumstances should such policies be applied?¹²

¹¹ Rust, Roland (2006), "From the Editor: The Maturation of Marketing as an Academic Discipline," *Journal of Marketing*, 70 (July), 1-2.

¹² Shelanski, Howard A., Joseph Farrell, Daniel Hanner, Christopher J. Metcalf, Mary W. Sullivan, and Brett W. Wendling (2012), "Economics at the FTC: Drug and PBM Mergers and Drip Pricing," *Review of Industrial Organization*, 41 (4), 303–319.

41. In addition, an FTC report followed the same approach as I did, by reviewing the academic literature to gain general insights into the effect of hotels' use of drip pricing for their mandatory resort fees on consumers, and cited papers from contexts beyond hotel pricing.¹³
42. Similarly in March 2023 the White House National Economic Council convened a panel of scholars (one of whom was me) and business leaders to understand how deceptive pricing practices can harm consumers, adversely influence competition, and harm honest businesses.¹⁴ We were specifically asked to discuss how academic research can help inform proposed regulation on pricing practices.
43. In June 2023, the U.S. Senate Commerce committee convened a hearing on how hidden fees can harm consumers and honest businesses. They convened a panel of three experts, which included two academics (one of whom was me). The Senators asked questions about how the findings from academic research can help inform potential legislative solutions.¹⁵
44. Thus, the U.S. FTC, White House, and Senate appear to disagree with Dr. Amir about the insights that can be obtained from academic research on this topic.
45. Marketers at many companies also use the knowledge gained from academic research in their practice of marketing. Organizations such as the Marketing Science Institute (MSI) and the American Marketing Association (AMA) were formed with the goal of bringing the knowledge from academic

¹³ Sullivan, Mary W. (2017), "Economic Analysis of Hotel Resort Fees," Bureau of Economics, Federal Trade Commission. Economic Issues (January), https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resortfees/p115503_hotel_resort_fees_economic_issues_paper.pdf

¹⁴ <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/21/readout-of-white-house-panel-on-the-economic-case-for-the-presidents-initiative-on-junk-fees/> (accessed on January 18, 2024).

¹⁵ <https://www.commerce.senate.gov/2023/6/protecting-consumers-from-junk-fees> (accessed on January 18, 2024).

research to the complex world of marketing. MSI's goal is to promote the practical applications of research and to use it to enhance marketing knowledge. Similarly, the goal of the AMA is to use the knowledge from the AMA's academic journals to help marketers develop solutions to current and future marketing problems. If insights from academic studies only generated knowledge specific to the exact stimuli, studies, and data as in that research, as Dr. Amir claims, then such goals would be impossible.

46. In fact, Dr. Amir reports on his CV receiving multiple research awards from MSI and that he was an AMA doctoral consortium fellow. It is ironic that Dr. Amir opines in his expert report that academic research cannot inform the real-world implications of marketing practices, while the organizations with which he is professionally involved and whose accolades he reports receiving on his CV promote the opposite.
47. Dr. Amir states (see para 70 in his expert report) that the literature I cite can be used to draw the opposite conclusion. For example, he notes that there is some academic literature that has shown that time pressure can lead to a decrease in purchase likelihood.¹⁶ He has found one academic article that he references which does demonstrate that there are some situations in which time pressure can lead to choice deferral or delaying making a choice between two options. Notably this research only examines situations where consumers are choosing between two options, for example when they are deciding between two different televisions with different features. In contrast, the papers I cited in my expert report cover a range of decision contexts (choice between options, evaluations of a single option, the impact of price-related cues). This body of literature by and large shows that when consumers are distracted and/or have limited time to process information, they tend to not be able to fully evaluate all relevant information and tend instead to focus only on a more limited set of information, such as the

¹⁶ Dhar, Ravi, and Stephen M. Nowlis (1999), "The Effect of Time Pressure on Consumer Choice Deferral," *Journal of Consumer Research*, 25 (4), 369-384.

information that is made most salient to them or the information deemed to be most important.¹⁷ It is on the basis of this large stream of literature that I draw my conclusions about the impact of time pressure in the current context.

48. I underscore my conclusions about the impact would hold even in the absence of countdown clocks. I only argue that the presence of countdown clocks heightens these effects. Thus, even if we assumed no impact of countdown clocks, my conclusions regarding the impact of the price presentation would remain the same.
49. Dr. Amir also states (see para 71 in his expert report) that my own work on partitioned pricing shows that the impact is not always the same and can be moderated by different factors. He also correctly states that other studies have similarly identified moderating effects. Several factors identified in the literature point to the Cineplex situation being one where partitioned pricing would have a larger effect. For example, as my co-authors and I note, and as other research has shown, consumers are less likely to fully process surcharges when they are small in magnitude compared to large. In the case of Cineplex, the online booking fee is relatively small.¹⁸ Other research has shown the impact of partitioned pricing is greater in situations when the firm using partitioned pricing has a positive or moderate reputation versus a negative one.¹⁹ I cannot know for sure, but assume

¹⁷ Bettman, James R., Mary Frances Luce, and John W. Payne (1998), "Constructive Consumer Choice Processes," *Journal of Consumer Research*, 27 (September), 233-248; Payne, John W., James R. Bettman, and Eric J. Johnson (1988), "Adaptive Strategy Selection in Decision Making," *Journal of Experimental Psychology: Learning, Memory, and Cognition*, 14 (3), 534-552; Shugan, Steven M. (1980), "The Cost of Thinking," *Journal of Consumer Research*, 7 (September), 99-111.

¹⁸ Greenleaf, Eric A., Eric J. Johnson, Vicki G. Morwitz, and Edith Shalev (2016), "The Price does not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing," *Journal of Consumer Psychology*, 26 (1), 105-124; Xia, Lan, and Kent B. Monroe (2004), "Price Partitioning on the Internet," *Journal of Interactive Marketing*, 18 (4), 63-73.

¹⁹ Cheema, Amar (2008), "Surcharges and Seller Reputation," *Journal of Consumer Research*, 35 (June), 167-177.

Cineplex has at least a moderate reputation, and therefore its use of partitioned pricing would lead to the effects I describe in my expert report.

50. Overall, although a meta-analysis that analyzes the results of many studies to create generalized knowledge showed that partitioned pricing, on average across studies has the effects I describe in my expert report,²⁰ I acknowledge that Dr. Amir is correct that there are a number of factors that influence the magnitude of the effects of partitioned pricing.
51. As part of this discussion, Dr. Amir contends that Cineplex presents both a partitioned price and a non-partitioned, all-inclusive price to its consumers. This is not true at the start of the consumer flow process. Before tickets are added to the cart, and without scrolling to the bottom of the Tickets page, consumers only see base prices for tickets and not a per-ticket total price including the online booking fee.
52. This tends to be a recurrent problem at later stages of the consumer flow process. Cineplex's website and app, with the exceptions noted below, do not provide a per-ticket non-partitioned all-inclusive price to its consumers. The subtotal shown at the bottom of the Tickets page, once consumers add tickets to their cart, and the totals shown on later pages, all correspond to a subtotal (before taxes) or total (including taxes) for all tickets purchased. Only for consumers who purchase a single movie ticket, would those subtotals and totals reflect a total per-ticket price including the online booking fee. And even in that case, for all the reasons I mention in my expert report, consumers may not pay much attention to the subtotal provided above the floating ribbon, or notice that it is different than the base movie price (see paras 132 and 133 of my expert report). For consumers who purchase multiple tickets, only after they add their first ticket, would the subtotal reflect the per-ticket total cost including the additional online

²⁰ Abraham, Ajay T. and Rebecca W. Hamilton (2018), "When Does Partitioned Pricing Lead to More Favorable Consumer Preferences?: Meta-analytic Evidence," *Journal of Marketing Research*, 55(5), 686-703.

booking fee. But for the reasons I outline above (see para 36 in this rebuttal report), consumers are unlikely to attend to this subtotal while they are actively adding multiple tickets to their cart.

53. Dr. Amir further opines that the pricing situations in the studies I reference bear little to no resemblance to the Cineplex matter (see para 73 in his expert report) and that many are older studies (see para 75 in his expert report). He is correct that the studies involve a range of industries and time periods, which in general is helpful for demonstrating that an effect is well established and for understanding whether the effects are generalizable. I also note that most of the research studies I draw from on drip pricing were conducted in recent years, from 2019 onwards.²¹ Dr. Amir notes that I did reference one study which is very relevant, that also involves the drip pricing of fees in an entertainment ticketing context, which is one of these more recent studies (see para 73 in his expert report).²²
54. He argues that the findings from this study support his claims and not mine. He appears to base that opinion on his belief that Cineplex is not engaging in drip pricing. His conclusion based on this research is flawed because, in contrast to what he claims, Cineplex does not present the online booking fee together with the base price as I discuss earlier. Importantly, the results from this drip pricing study that involved entertainment tickets demonstrate that when ticket fees (similar to Cineplex's online booking fee) are dripped, consumers become more likely to buy tickets and buy more expensive tickets. Thus, the results in this recent study, with the context closest to the

²¹ Blake, Tom, Sarah Moshary, Kane Sweeney, and Steve Tadelis (2021), "Price Salience and Product Choice," *Marketing Science*, 40 (4), 619-636; Rasch, Alexander, Miriam Thöne, and Tobias Wenzel (2020), "Drip Pricing and its Regulation: Experimental Evidence." *Journal of Economic Behavior & Organization*, 176, 353-370; Santana, Shelle, Steven Dallas, and Vicki G. Morwitz (2019), "Consumers' Reactions to Drip Pricing," *Marketing Science*, 39 (1), 188-210.

²² Blake, Tom, Sarah Moshary, Kane Sweeney, and Steve Tadelis (2021), "Price Salience and Product Choice," *Marketing Science*, 40 (4), 619-636.

current one, provide evidence consistent with my opinions regarding the detrimental effects of drip pricing on consumers.

55. Dr. Amir returns to his conjecture that drip and partitioned pricing would have different effects in industries that involve repeat purchasing (see para 76 of his expert report). The study on ticketing in the entertainment industry, mentioned above, did involve repeat purchasing. It found the detrimental effects of drip pricing on consumers were not eliminated for consumers who made repeat purchases. Further, the fact that a similar industry where consumers are observed to buy tickets multiple times found that drip pricing leads to greater purchasing is evidence against Dr. Amir's claim that movie theaters would not use drip pricing because it would hurt their profitability. In contrast, this study from a very similar industry showed drip pricing led to increased revenues.

VII. Dr. Amir's analysis of customer flow through the Cineplex website is irrelevant for the matter at hand.

56. Dr. Amir reports the number of visits to the Cineplex web site and the number of visits to different pages on that website (see paras 45-51 and 79 of his expert report). I am not commenting on the accuracy of his analysis.
57. Regardless of the accuracy of his reported statistics, I agree with him that customers likely use the Cineplex website to obtain information about movies, theaters, and experience. But, I disagree with him that showing that this information has value to consumers has any relevance for how consumers who do reach the Tickets page react to price information provided on the website and the app.
58. Notably Dr. Amir does not provide any information regarding the subset of consumers who reach the Tickets page, and how many of them scroll to the bottom of that page, if that information is available. Nor does he provide any

information about how many click on the “i” button next to the online booking fee header.

59. Dr. Amir also analyzes data on consumer seat reservation behavior. I agree with him that some consumers likely value being able to see what seats are available and being able to reserve seats in advance, and that many would prefer center seats, so the results he provides are not surprising (see paras 50 and 51 of his expert report). However, I disagree that this has any relevance to the question of how Cineplex’s presentation of the online booking fee affects consumers. It is interesting to note that nowhere did I see on the website or the app where it said that the online booking fee was being assessed so that consumers could obtain the benefit of seeing seat availability and reserving seats in advance. If the online booking fee were being offered primarily as a charge for providing that value, a better name for the fee might have been a seat reservation fee. Should a firm wish to charge more for providing consumers with additional benefits, informing consumers that there is a price to be paid is a reasonable expectation. My opinion remains that Cineplex does not fully inform consumers about the price to obtain that value when shopping on its website or app, since information about the additional online booking fee is not made salient.
60. Dr. Amir criticizes me for not empirically testing whether the way Cineplex presents its online booking fee affects consumers’ price perceptions and purchase behavior (see para 78 in his expert report). He then goes on to state, in contrast, that data provided by Cineplex provides evidence that consumers were unimpacted by the online booking fee (see para 79 of his expert report). I find that his analysis of website visits and customer flow, seat reservations, or consumer complaints do not have any relevance to the question of how Cineplex’s presentation of information about the online booking fee affected consumers’ price perceptions and behavior. Thus, I have good reason to disagree with his conclusions.

REFERENCES

1. Abraham, Ajay T. and Rebecca W. Hamilton (2018), "When Does Partitioned Pricing Lead to More Favorable Consumer Preferences?: Meta-analytic Evidence," *Journal of Marketing Research*, 55(5), 686-703.
2. Bettman, James R., Mary Frances Luce, and John W. Payne (1998), "Constructive Consumer Choice Processes," *Journal of Consumer Research*, 27 (September), 233-248
3. Blake, Tom, Sarah Moshary, Kane Sweeney, and Steve Tadelis (2021), "Price Salience and Product Choice," *Marketing Science*, 40 (4), 619-636.
4. Cheema, Amar (2008), "Surcharges and Seller Reputation," *Journal of Consumer Research*, 35 (June), 167-177.
5. Dhar, Ravi, and Stephen M. Nowlis (1999), "The Effect of Time Pressure on Consumer Choice Deferral," *Journal of Consumer Research*, 25 (4), 369-384.
6. Gabaix, Xavier, and David Laibson (2006), "Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets," *The Quarterly Journal of Economics*, 121 (2), 505-540.
7. Greenleaf, Eric A., Eric J. Johnson, Vicki G. Morwitz, and Edith Shalev (2016), "The Price does not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing," *Journal of Consumer Psychology*, 26 (1), 105-124.
8. Hyman, Drew, John Shingler, and Mitchell Miller (1992), "Consumer Complaints and Public Policy: Validating the 'Tip-of-the-Iceberg' Theory," *Sociological Practice*, 10 (1), 97-122.
9. Morwitz, Vicki G., Eric Greenleaf, and Eric Johnson (1998), "Divide and Prosper: Consumers' Reactions to Partitioned Prices," *Journal of Marketing Research*, 25 (November), 453-463.
10. Payne, John W., James R. Bettman, and Eric J. Johnson (1988), "Adaptive Strategy Selection in Decision Making," *Journal of Experimental Psychology: Learning, Memory, and Cognition*, 14 (3), 534-552.

11. Rasch, Alexander, Miriam Thöne, and Tobias Wenzel (2020), "Drip Pricing and its Regulation: Experimental Evidence." *Journal of Economic Behavior & Organization*, 176, 353-370.
12. Rowley, Jennifer. (2000), "Product Search in E-Shopping: A Review and Research Propositions," *Journal of Consumer Marketing*, 17(1), 20-35.
13. Rust, Roland (2006), "From the Editor: The Maturation of Marketing as an Academic Discipline," *Journal of Marketing*, 70 (July), 1-2.
14. Santana, Shelle, Steven Dallas, and Vicki G. Morwitz (2019), "Consumers' Reactions to Drip Pricing," *Marketing Science*, 39 (1), 188-210.
15. Seim, Katja, Maria Ana Vitorino, and David Muir (2017), "Drip Pricing When Consumers Have Limited Foresight: Evidence from Driving School Fees," Working paper.
16. Shelanski, Howard A., Joseph Farrell, Daniel Hanner, Christopher J. Metcalf, Mary W. Sullivan, and Brett W. Wendling (2012), "Economics at the FTC: Drug and PBM Mergers and Drip Pricing," *Review of Industrial Organization*, 41 (4), 303–319.
17. Shugan, Steven. M. (1980, "The Cost of Thinking," *Journal of Consumer Research*, 7 (September), 99-111.
18. Sullivan, Mary W. (2017), "Economic Analysis of Hotel Resort Fees," Bureau of Economics, Federal Trade Commission. Economic Issues (January), https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resortfees/p115503_hotel_resort_fees_economic_issues_paper.pdf
19. Wong, Penelope (2019), "Protect Yourself from Hidden Fees," *Consumer Reports*, May 29, accessed on January 15, 2024, <https://www.consumerreports.org/money/fees-billing/protect-yourself-from-hidden-fees-a1096754265/>.
20. Xia, Lan, and Kent B. Monroe (2004), "Price Partitioning on the Internet," *Journal of Interactive Marketing*, 18 (4), 63-73.

CT-2023-003

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34,
as amended;

AND IN THE MATTER OF an application by the Commissioner
of Competition for an order pursuant to section 74.1 of the
Competition Act and subsection 74.01(1.1) of the *Competition
Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

**AFFIDAVIT OF VICKI MORWITZ
(AFFIRMED JANUARY 29, 2024)**
